

Introduced by Senator Alarcon

January 5, 2005

An act to amend Sections 11750, 11750.1, 11751.35, 11752.6, 11752.8, and 11873 of, to add Section 11750.5 to, and to repeal and add Article 2 (commencing with Section 11730) of Chapter 3 of Part 3 of Division 2 of, the Insurance Code, and to add Chapter 8 (commencing with Section 180) to Division 1 of, and to add Section 6401.9 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 46, as introduced, Alarcon. Workers' compensation insurance.

Existing law generally regulates workers' compensation insurance rates. Existing law requires that rates be adequate to cover an insurer's losses and expenses, that they not tend to create a monopoly in the market, and that they not be unfairly discriminatory. Existing law requires workers' compensation insurers to file rates with the Insurance Commissioner, and allows the commissioner to disapprove rates that violate these provisions.

This bill would require, instead, that workers' compensation rates not be excessive, inadequate, or unfairly discriminatory, as described. The bill would revise the workers' compensation rate regulation procedures by establishing the Commission on Workers' Compensation Rate Regulation, which would be responsible for setting pure premium rates, for adopting a uniform experience rating plan, for issuing minimum and maximum expense multipliers to be used by insurers, and for hearing appeals of rate decisions, as specified. The commission would be composed of the Governor, the Attorney General, and the commissioner, or their designees. The bill would set forth procedures for the conduct of public hearings on rate regulation, including procedures for the participation of intervenors

and of a public advocate to be appointed by the Governor. The bill would require the commission to establish a policyholder ombudsman to provide information and assistance to policyholders regarding workers' compensation classifications and rates, and to prepare certain reports.

Existing law requires the commissioner to designate a rating organization to serve as his or her statistical advisor, to develop a classification system, to submit advisory pure premium rates to the commissioner, and to perform other specified duties. Existing law requires the commissioner to approve, disapprove, or modify the advisory pure premium rates submitted by the rating organization.

This bill would require the commission to designate a rating organization for the purposes described above. It would specify how the membership of the board of the rating organization is to be constituted.

Existing law requires that a workers' compensation insurer adhere to an experience rating plan. Existing law requires that an experience rating plan contain reasonable eligibility standards, provide adequate incentives for loss prevention, and provide for sufficient premium differentials so as to encourage safety.

This bill would, in addition, allow an employer to obtain a certificate of merit based upon the employer's safety program. It would require an insurer to provide a credit in a specified amount to an employer that obtains a certificate of merit. The bill would also require an insurer to grant a credit to an employer that provides health insurance to its employees, as specified, and a credit to an employer that has not had a claim during the previous 2 years.

The bill would prohibit a workers' compensation insurer from classifying a policyholder based upon the policyholder's entire business, and would require that an insurer, upon request of the insured, classify employees in separate operations differently. It would require that an employer provide accurate information regarding the classification of its employees. A violation of this provision by an employer would be a crime pursuant to other provisions of law. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

Existing law establishes the State Compensation Insurance Fund for the purpose of transacting workers' compensation and related insurance, and exempts the fund from specified provisions of law applicable to other state agencies generally. Existing law requires

every domestic insurer to submit to the commissioner, by a specified date, certain financial reports, including a risk-based capital report, as defined. Existing law allows the commissioner to take specified actions if this report indicates that certain financial conditions exist, and requires him or her to take other actions if the report indicates that certain other conditions exist.

This bill would exempt the State Compensation Insurance Fund from these provisions regarding risk-based capital.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 2 (commencing with Section 11730) of
2 Chapter 3 of Part 3 of Division 2 of the Insurance Code is
3 repealed.

4 SEC. 2. Article 2 (commencing with Section 11730) is added
5 to Chapter 3 of Part 3 of Division 2 of the Insurance Code, to
6 read:

7
8 Article 2. State Rate Supervision
9

10 11730. The following definitions govern the construction and
11 meaning of the terms used in this article:

12 (a) "Classification system" or "classification" means a plan,
13 system, or arrangement for recognizing differences in exposure
14 to hazards among industries, occupations, or operations of
15 insurance policyholders.

16 (b) "Commission" means the Commission on Workers'
17 Compensation Rate Regulation established pursuant to Section
18 180 of the Labor Code.

19 (c) "Expenses" means that portion of any rate attributable to
20 acquisition, field supervision, collection expenses, general
21 expenses, taxes, licenses, and fees.

(d) “Experience rating” means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder’s loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(e) “Loss trending” means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

(f) “Market” means the interaction between buyers and sellers of workers’ compensation insurance within this state pursuant to the provisions of this article.

(g) “Pure premium rate” means that portion of the rate which represents the loss cost per unit of exposure, including loss adjustment expense.

(h) “Rate” means the cost of insurance per exposure base unit, prior to any application of individual risk variations based on loss or expenses considerations and does not include minimum premiums.

(i) “Rating organization” means the entity designated by the commission pursuant to subdivision (a) of Section 11734.

(j) “Statistical plan” means the plan, system, or arrangement used in collecting data.

(k) “Supplementary rate information” means any manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured.

(l) “Supporting information” means the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commission.

11731. This article applies to workers’ compensation insurance and employers’ liability insurance written in connection therewith.

11732. (a) Rates shall not be excessive, inadequate, or unfairly discriminatory.

1 (b) A rate shall not be held to be excessive unless the rate is
2 unreasonably high for the insurance coverage provided.

3 (c) A rate shall not be held to be inadequate unless the rate is
4 unreasonably low for the insurance coverage provided and any of
5 the following is true:

6 (1) The continued use of the rate endangers the solvency of the
7 insurer.

8 (2) The use of the rate has or will have the effect of destroying
9 competition among insurers, creating a monopoly, or causing a
10 form of insurance to be unavailable to a significant number of
11 applicants who are in good faith entitled to procure the insurance
12 through ordinary methods.

13 (d) A rate shall not be held to be unfairly discriminatory if,
14 after allowing for practical limitations, price differentials reflect
15 equitably the difference in expected losses and expenses. A rate
16 of an insurer shall not be held to be unfairly discriminatory
17 because different premiums result for policyholders with like loss
18 exposures but different expenses, or like expenses but different
19 loss exposures, as long as the rate reflects the differences with
20 reasonable accuracy.

21 11733. In determining whether rates comply with Section
22 11732, the following criteria shall apply:

23 (a) Due consideration may be given to past and prospective
24 loss and expenses experience within this state, to catastrophe
25 hazards and contingencies, to events or trends within this state, to
26 loadings for leveling premium rates over time or for dividends or
27 savings to be allowed or returned by insurers to their
28 policyholders, members or subscribers, and to all other relevant
29 factors, including judgment.

30 (b) The expense provisions included in the rates to be used by
31 an insurer shall reflect the operating methods of the insurer and,
32 so far as is credible, its own actual and anticipated expense
33 experience.

34 (c) The rates may contain a provision for contingencies and an
35 allowance permitting a reasonable profit. In determining the
36 reasonableness of the margin for underwriting profit and
37 contingencies, consideration shall be given to all after-tax
38 investment profit or loss from unearned premium and loss
39 reserves attributable to workers' compensation insurance, as well
40 as the factors used to determine the amount of reserves.

1 11734. (a) The commission shall designate a rating
2 organization to assist it in gathering, compiling, and reporting
3 relevant statistical information, developing a classification
4 system, and establishing pure premium rates. Every workers'
5 compensation insurer shall record and report its workers'
6 compensation experience to the rating organization as set forth in
7 the uniform statistical plan approved by the commission.

8 (b) The rating organization shall develop and file manual
9 rules, subject to the approval of the commission, reasonably
10 related to the recording and reporting of data pursuant to the
11 uniform statistical plan, uniform experience rating plan, and any
12 classification systems that may be in effect. Every workers'
13 compensation insurer shall adhere to the approved manual rules
14 and experience rating plan in writing and reporting its business.
15 No insurer shall agree with any other insurer or with a rating
16 organization to adhere to manual rules that are not reasonably
17 related to the recording and reporting of data pursuant to the
18 uniform statistical plan or classification system developed by the
19 rating organization.

20 (c) The commission may order that each insurer file for prior
21 approval, subject to the provisions of this article, any changes to
22 its manuals of classification, manuals of rules and rates, and
23 rating plans the insurer proposes to use for that specified
24 classification, type, or kind of insurance. The order shall state, in
25 writing, the reasons for the commission's decision to order the
26 filing. An order issued under this subdivision shall expire two
27 years after the date of issuance. If an order is in effect, rates to
28 which the order applies shall be filed at least 30 days before their
29 proposed effective date. Failure of the commission to act within
30 30 days after submittal constitutes approval.

31 11735. (a) The commission shall establish pure premium
32 rates in accordance with the following procedure:

33 (1) The rating organization shall file recommended pure
34 premium rates with the commission. The commission shall make
35 the recommended rates public.

36 (2) Each insurer shall file with the commission the loss
37 adjustment expense or other expense multipliers that it desires to
38 use in setting rates.

1 (3) The commission shall hold a hearing in accordance with
2 Section 11735.5 on the adequacy of the rates and the expense
3 multipliers submitted by insurers.

4 (4) Within 30 days of the conclusion of the hearing, the
5 commission shall do each of the following:

6 (A) Issue the pure premium rates applicable to all workers'
7 compensation policies.

8 (B) Issue minimum and maximum expense multipliers
9 applicable to all workers' compensation insurance policies. Any
10 insurer that desires to use an expense multiplier that does not fall
11 within the range established by the commission shall obtain the
12 commission's approval pursuant to Section 11738.

13 (b) The commission shall not approve a pure premium rate
14 that violates Section 11732.

15 (c) The commission shall not approve a minimum or
16 maximum expense multiplier that fails to accurately reflect
17 reasonable expenses for workers' compensation insurers, based
18 upon evidence introduced at the hearing required under
19 paragraph (3) of subdivision (a).

20 11735.5. (a) The Legislature finds and declares that a fair
21 system of workers' compensation rate regulation requires a
22 public hearing that is open and inclusive. Therefore, it is the
23 intent of the Legislature that the commission encourage the
24 intervention of individuals and groups interested in the setting of
25 workers' compensation insurance rates, and that the commission
26 allow a high level of public participation in the hearing.

27 (b) The hearing required by paragraph (3) of subdivision (a) of
28 Section 11735 shall be conducted in a manner that allows for the
29 examination and cross-examination of witnesses by all
30 authorized participants.

31 (c) The commission shall designate the individuals and groups
32 that are authorized to call witnesses and otherwise participate in
33 the proceedings. The commission shall designate the public
34 advocate appointed by the chair pursuant to subdivision (c) of
35 Section 181 of the Labor Code as an authorized participant, and
36 shall authorize the participation of any other persons or groups
37 designated by the public advocate.

38 (d) The public advocate shall, prior to the hearing, solicit
39 intervention by members of the public interested in the setting of
40 workers' compensation insurance rates. The public advocate

1 shall authorize the participation of intervenors in a manner that
2 will allow all reasonable perspectives and interests to be
3 represented at the hearing. The public advocate may retain
4 experts as needed to serve as witnesses and to assist in evaluating
5 the information that is the subject of the hearing.

6 (e) An intervenor may present evidence, examine and
7 cross-examine witnesses, file written arguments, and conduct
8 discovery. An intervenor's participation may be subject to
9 reasonable limitations imposed by the chair for the purpose of
10 conducting an orderly and efficient hearing. An intervenor shall
11 be subject to discovery, and its witnesses may be
12 cross-examined.

13 (f) Except as expressly provided in this section, the hearing
14 shall be conducted in accordance with the Administrative
15 Procedure Act.

16 11736. (a) The commission shall, after notice and hearing in
17 accordance with the Administrative Procedure Act, adopt a
18 uniform experience rating plan.

19 (b) Every workers' compensation insurer shall adhere to the
20 uniform experience rating plan adopted by the commission.

21 11737. (a) Every insurer shall file with the commission on an
22 annual basis its expenses attributable to workers' compensation.

23 (b) Information required pursuant to this section shall be filed
24 in the form and manner prescribed by the commission. The
25 information shall be open to public inspection at any reasonable
26 time. Copies may be obtained by any person upon request and
27 the payment of a reasonable charge.

28 11738. (a) If an insurer desires to use a rate that does not
29 conform to the applicable pure premium rate issued by the
30 commission, as modified by an expense multiplier that falls
31 within the expense multiplier range approved by the commission,
32 the insurer shall apply to the commission for its approval of the
33 rate.

34 (b) The commission may disapprove a rate if the insurer fails
35 to comply with the filing requirements of this article.

36 (c) The commission shall disapprove rates if the commission
37 determines that premiums charged, in the aggregate, resulting
38 from the use of the rates or the rates as modified by any
39 supplementary rate information, would violate Section 11732.

1 (d) If the commission intends to disapprove rates pursuant to
2 this section, the commission shall serve notice on the insurer of
3 the intent to disapprove and shall schedule a hearing to
4 commence within 60 days of the date of the notice.

5 (e) If the commission disapproves rates after the hearing
6 pursuant to subdivision (d), the commission shall immediately
7 serve notice on the insurer of the disapproval.

8 (f) If the commission disapproves a rate, the commission shall
9 issue an order specifying in what respects the rate fails to meet
10 the requirements of this article and stating when, within a
11 reasonable period thereafter, that rate shall be discontinued for
12 any policy issued or renewed after a date specified in the order.
13 The order shall be issued within 20 days after the notice
14 prescribed in subdivision (e) is served.

15 (g) Whenever an insurer has no legally effective rates as a
16 result of the commission's disapproval of rates or other act, the
17 commission shall specify interim rates for the insurer that protect
18 the interests of all parties, and may order that a specified portion
19 of the premiums be placed in an escrow account approved by the
20 commission. When new rates become legally effective, the
21 commission shall order the escrowed funds or any overcharge in
22 the interim rates to be distributed appropriately, except that
23 refunds of less than ten dollars (\$10) per policyholder shall not
24 be required.

25 (h) Upon the written application of the insurer and insured,
26 stating its reasons therefor, filed with the commission, a rate in
27 excess of that otherwise applicable may be used on any specific
28 risk.

29 (i) Any insured may appeal a decision of the commission
30 under this section, and shall be entitled to a hearing before the
31 commission.

32 11739. Notwithstanding Section 679.70, the commission may
33 not issue, nor may any insurer use, any classification system or
34 rate, as applied or used, that violates Section 679.71 or 679.72 or
35 that violates the Unruh Civil Rights Act.

36 11740. An experience rating plan shall contain reasonable
37 eligibility standards, provide adequate incentives for loss
38 prevention, and shall provide for sufficient premium differentials
39 so as to encourage safety.

1 11740.2. (a) An insurer shall provide a 5 percent discount,
2 beyond any experience modification rate or other discount, to an
3 employer that obtains a certificate of merit pursuant to Section
4 6401.9 of the Labor Code.

5 (b) An insurer shall provide a credit, beyond any experience
6 modification rate or other discount, to an employer that provides
7 health insurance to its employees in accordance with the
8 proposed requirements set forth in Chapter 673 of the Statutes of
9 2003.

10 (c) (1) An insurer shall provide a credit, beyond any
11 experience modification rate or other discount, to an employer
12 that has not filed a workers' compensation claim within the
13 preceding two years.

14 (2) An employer shall not make or cause to be made any
15 knowingly false or fraudulent statement regarding an injured
16 worker's entitlement to benefits with the intent to discourage the
17 injured worker from claiming benefits or pursuing a claim. A
18 violation of this paragraph shall be punishable pursuant to
19 subdivision (b) of Section 1871.4.

20 11740.4. (a) The single enterprise rule or similar rule
21 requiring a workers' compensation insured to be classified
22 according to the entire business in which the insured is engaged
23 shall not be used. Upon request of an insured, an insurer shall
24 classify employees in separate operations of a business in
25 different classifications consistent with the insurer's rate system
26 filing if payroll information is supplied to the insurer for each
27 operation requested to be in a separate classification.

28 (b) An employer shall provide accurate information to its
29 insurer, to the rating organization, and to the commission with
30 respect to the classification of each employee. Any willful
31 provision of false information in this regard shall constitute a
32 violation of Section 11760.

33 11741. A classification shall take no account of any physical
34 impairment of employees or the extent to which employees may
35 have persons dependent upon them for support.

36 11742. (a) An insurer shall not use any plan for the payment
37 of dividends to policyholders by reason of a participating
38 provision in a workers' compensation insurance policy which is
39 unfairly discriminatory.

(b) Every insurer issuing workers' compensation insurance policies under the laws of this state shall file annually with the rating organization information relating to dividend payments made to its policyholders. Information filed shall be in sufficient detail to permit the rating organization to prepare, for the commission's review and approval, a report showing in the aggregate for all companies premiums earned, losses paid, losses incurred, and dividends paid the preceding calendar year under policies containing a participating provision, separately by premium size and loss ratio categories, as may reasonably be prescribed by the commission.

(c) Information submitted by individual companies pursuant to this section shall be confidential and not subject to public disclosure under any law of this state.

11743. (a) The Legislature finds and declares that the insolvencies of more than a dozen workers' compensation insurance carriers have seriously constricted the market and led to a dangerous increase in business at the State Compensation Insurance Fund. Yet more than 200 insurance companies are still licensed to offer workers' compensation insurance in California. Unfortunately, many employers do not know which carriers are offering coverage, and it is both difficult and time consuming to try to get information on rates and coverages from competing insurance companies. A central information source would help employers find the required coverage at the best competitive rate.

(b) The commission shall maintain, on the previously established Internet Web site, an online rate comparison guide showing workers' compensation insurance rates for the 50 insurance companies writing the highest volume of business in this line during the two preceding years.

(c) The online comparison shall display rates for each class set forth in the classification system adopted by the commission pursuant to Section 11734, shall include the effective date of each rate, and shall list the rates for each class from the lowest to the highest rate, any minimum premiums by classification, and any geographical restrictions.

(d) The commission, after recommendation from the rating organization shall determine the cost savings achieved in the workers' compensation reform legislation enacted in the 2003-04 legislative session and any subsequent reforms. Each insurer

1 shall certify, in the form and manner determined by the
2 commission, that its rates reflect those cost savings. The
3 certifications shall be made available to the public on the Internet
4 Web site maintained by the commission.

5 11744. The commission shall authorize the rating
6 organization to compute how pure premium data that has been
7 previously collected would have been affected by any significant
8 change in a law resulting from a subsequent statute or subsequent
9 court decision, if the change in the law were in effect before the
10 pure premium data had been collected. The rating organization
11 shall determine the effect that such a legal change would have
12 had in a manner that reasonably reflects the legal change. The
13 determination of the rating organization shall be disseminated
14 only after approval or amendment by the commission. The
15 commission shall approve, reject, or amend the determination to
16 reasonably reflect the effects of the legal change within 30 days
17 after the determination is submitted to the commission. If the
18 commission fails to approve, reject, or amend the determination
19 within the 30 days, the determination shall be deemed approved.

20 11745. (a) On or before May 15, 2006, and on or before each
21 May 15 thereafter, the commission shall make a determination as
22 to whether a reasonable degree of competition in the workers'
23 compensation insurance market exists on a statewide basis. If the
24 commission determines that a reasonable degree of competition
25 in the worker's compensation insurance market does not exist on
26 a statewide basis, the commission shall hold a public hearing and
27 shall issue a report delineating specific classifications and kinds
28 or types of insurance, if any, where competition does not exist.
29 The report shall be based on relevant economic tests, including,
30 but not limited to, those in subdivision (c). The findings in the
31 report shall not be based on any single measure of competition,
32 but appropriate weight shall be given to all measures of
33 competition. Any person who disagrees with the report and
34 findings of the commission may request a contested hearing
35 pursuant to the Administrative Procedure Act not later than 60
36 days after issuance of the report.

37 (b) If the results of the report issued under subdivision (a) are
38 disputed or if the commission determines that circumstances that
39 the report was based on have changed, the commission shall
40 issue a supplemental report to the report under subdivision (a),

1 which shall include a determination of whether or not a
2 reasonable degree of competition exists in the worker's
3 compensation insurance market. The supplemental report shall be
4 issued not later than November 15 immediately following the
5 release of the report under subdivision (a) that this report
6 supplements, and shall be supported by substantial evidence.

7 (c) All of the following shall be considered by the commission
8 for purposes of subdivisions (a) and (b):

9 (1) The extent to which any insurer controls all or a portion of
10 the workers' compensation insurance market. In making a
11 determination under this paragraph, the commission shall use all
12 insurers in this state, including self-insurers and group
13 self-insurers, as a base for calculating market share.

14 (2) Whether the total number of companies writing workers'
15 compensation insurance in this state is sufficient to provide
16 multiple options to employers.

17 (3) The disparity among workers' compensation insurance
18 rates and classifications to the extent that the classifications result
19 in rate differentials.

20 (4) The availability of workers' compensation insurance to
21 employers in all geographic areas and all types of business.

22 (5) The residual market share.

23 (6) The overall rate level that is not excessive, inadequate, or
24 unfairly discriminatory.

25 (7) Any other factors the commission considers relevant.

26 (d) The reports required under subdivisions (a) and (b) shall be
27 forwarded to the Governor, to the Speaker of the Assembly, and
28 to the President Pro Tem of the Senate.

29 11746. The commission shall study, on an ongoing basis,
30 proposals on changing classification systems and experience
31 modification factors, and instituting new merit rating plans.

32 11747. The commission shall establish a policyholder
33 ombudsman. The policyholder ombudsman shall be a person
34 with sufficient knowledge of the workers' compensation
35 ratemaking process to provide information and assistance to
36 policyholders in obtaining and evaluating the information
37 provided in Article 3 (commencing with Section 11750) and this
38 article, and in Sections 3761 and 3762 of the Labor Code. The
39 commission shall provide compensation for the ombudsman and
40 necessary staff and other necessary resources to allow the

1 ombudsman to provide prompt and complete service to workers'
2 compensation policyholders of this state. The policyholder
3 ombudsman may advise the policyholder in any dispute with
4 insurers or the rating organization, or on appeal to the
5 commission.

6 SEC. 3. Section 11750 of the Insurance Code is amended to
7 read:

8 11750. (a)–The purpose of this article is to promote the public
9 welfare by regulating concert of action between insurers in
10 collecting and tabulating rating information and other data that
11 may be helpful in the making of adequate pure premium rates for
12 workers' compensation insurance and for employers liability
13 insurance incidental thereto and written in connection therewith
14 for all admitted insurers and in submitting them to the
15 commissioner for approval; to authorize and regulate the
16 existence and cooperation of qualified rating organizations to one
17 of which each workers' compensation insurer shall belong; to
18 authorize and regulate cooperation between insurers, rating
19 organizations and advisory organizations in ratemaking and other
20 related matters to the end that the purposes of this chapter may be
21 complied with and carried into effect.

22 ~~(b) Notwithstanding any other provision of law, within 60~~
23 ~~days of receiving an advisory pure premium rate filing made~~
24 ~~pursuant to subdivision (b) of Section 11750.3, the Insurance~~
25 ~~Commissioner shall hold a public hearing, and within 30 days of~~
26 ~~the conclusion of the hearing, approve, disapprove, or modify the~~
27 ~~proposed rate.~~

28 SEC. 4. Section 11750.1 of the Insurance Code is amended to
29 read:

30 11750.1. As used in this article, unless a different meaning is
31 manifest, the term:

32 (a) "Insurer" means every insurer authorized to transact
33 workers' compensation insurance and employer's liability
34 insurance incidental thereto and written in connection therewith
35 in this state, including the State Compensation Insurance Fund;

36 (b) "Rating organization" means any organization which has
37 as its primary object or purpose the collecting of loss and
38 expense statistics and other statistical information and data, the
39 making of pure premium rates and those rating plans authorized
40 by Section 11734 for workers' compensation insurance and

1 employer's liability insurance incidental thereto and written in
2 connection therewith and presenting them to the commissioner
3 for approval;

4 (c) "Insurance" means workers' compensation insurance and
5 employer's liability insurance incidental thereto and written in
6 connection therewith;

7 (d) "Willful" or "willfully" in relation to an act or omission
8 which constitutes a violation of this article means with actual
9 knowledge or belief that such act or omission constitutes such
10 violation and with specific intent to commit such violation.

11 (e) "Advisory organization" means every person, group or
12 organization, other than an insurer, whether located within or
13 without this state, which prepares policy forms or underwriting
14 rules incidental to or in connection with workers' compensation
15 insurance and employer's liability insurance incidental thereto
16 and written in connection therewith or which collects and
17 furnishes to admitted insurers or rating organizations loss
18 statistics or other statistical information and data relating to
19 workers' compensation insurance and employer's liability
20 insurance incidental thereto and written in connection therewith
21 and acts in an advisory capacity to such insurers or rating
22 organizations as distinguished from a ratemaking capacity. No
23 duly authorized attorney at law acting in the usual course of his
24 profession shall be deemed to be an advisory organization.

25 (f) "Employer's liability insurance incidental thereto and
26 written in connection therewith" means insurance of any liability
27 of employers for injuries to, or death of, employees arising out
28 of, and in the course of, employment when this insurance is
29 incidental to, and written in connection with, the workers'
30 compensation insurance issued to the same employer and
31 covering the same employer interests.

32 (g) "*Commission*" means the *Commission on Workers'*
33 *Compensation Rate Regulation established pursuant to Section*
34 *180 of the Labor Code.*

35 SEC. 5. Section 11750.5 is added to the Insurance Code, to
36 read:

37 11750.5. (a) The rating organization designated by the
38 commission pursuant to subdivision (c) of Section 11734 shall be
39 governed by a board of directors, the membership of which shall
40 be as follows:

1 (1) Six members who represent workers' compensation
2 insurers in the state.

3 (2) Two members who represent employers in the state.

4 (3) Two members who represent organized labor.

5 (4) Two members who represent the general public.

6 (b) Each member of the board shall serve for a term of one
7 year.

8 (c) (1) Of the members specified in paragraph (1) of
9 subdivision (b), one shall represent the State Compensation
10 Insurance Fund. The other five of these members shall be
11 appointed by the commission from recommendations made by
12 the insurance industry of this state, and shall generally be
13 representative of small, medium, and large insurers.

14 (2) The members specified in paragraphs (2) through (4),
15 inclusive, of subdivision (b) shall be appointed by the
16 commission.

17 SEC. 6. Section 11751.35 of the Insurance Code is amended
18 to read:

19 11751.35. (a) ~~Four members of the public, two representing~~
20 ~~organized labor and two representing insured employers,~~
21 ~~appointed pursuant to subdivision (b) of Section 11751.3, shall~~
22 ~~be entitled to serve on the managing or governing committee of a~~
23 ~~rating organization licensed under this article.~~ A public member
24 *of a rating organization licensed under this article* shall be
25 entitled to vote on all issues involving pure premium rates,
26 classifications, rating plans, rating systems, manual rules and
27 policy, and endorsement forms which are properly brought
28 before the committee. A public member shall be removed by the
29 ~~commissioner~~ *commission* only for cause.

30 (b) In the event a public member is unable or unwilling to
31 complete his or her term, after consultation with the California
32 Labor Federation, AFL-CIO, other statewide organized labor
33 organizations, and statewide organizations representing business,
34 as the case may be, the ~~commissioner~~ *commission* shall appoint a
35 successor from organized labor or an insured employer to
36 complete the unexpired term.

37 (c) The public members who serve on the governing
38 committee of a rating organization licensed under this article
39 together may, by a majority vote, retain experts who shall include
40 a fellow of the Casualty Actuarial Society, to advise them on any

1 matter specified in subdivision (a). The actuary hired may
2 participate in all proceedings of the actuarial committee of the
3 rating organization. ~~The reasonable expense of retaining these~~
4 ~~experts shall not exceed one hundred fifty thousand dollars~~
5 ~~(\$100,000) per year and shall be paid from the budget of the~~
6 ~~department. The commissioner shall increase this amount~~
7 ~~annually to reflect any needed cost-of-living adjustments. The~~
8 ~~public members may submit information obtained from these~~
9 ~~experts, as well as any other information they deem appropriate,~~
10 ~~to the commissioner for his or her consideration in approving a~~
11 ~~change of any matter specified in subdivision (a).~~

12 ~~(d) In addition to the expenses authorized pursuant to~~
13 ~~subdivision (c), the public members who serve on the governing~~
14 ~~committee of a rating organization licensed under this article may~~
15 ~~expend up to an additional one hundred thousand dollars~~
16 ~~(\$100,000) per year, which shall be paid by insurer members of~~
17 ~~the rating organization. Those funds shall be used to retain staff,~~
18 ~~who shall be hired by a majority vote of the public members.~~

19 *The public members may also retain staff, who shall be hired*
20 *by a majority vote of the public members. The reasonable*
21 *expense of retaining these experts and staff members shall not*
22 *exceed three hundred thousand dollars (\$300,000) per year and*
23 *shall be paid from the budget of the commission. The commission*
24 *shall increase this amount annually to reflect any needed*
25 *cost-of-living adjustments. The public members may submit*
26 *information obtained from these experts, as well as any other*
27 *information they deem appropriate, to the commission for its*
28 *consideration in approving a change of any matter specified in*
29 *subdivision (a).*

30 SEC. 7. Section 11752.6 of the Insurance Code is amended to
31 read:

32 11752.6. (a) A licensed rating organization shall make
33 available, in writing, to an employer insured under a workers'
34 compensation policy, all policyholder information contained in
35 its records upon request of the employer and after notice to the
36 employer's insurer.

37 (b) As used in this section, "policyholder information" means
38 all information relating to the employer's loss experience, claims,
39 classification assignments, and policy contracts. Policyholder
40 information also includes information relating to rating plans,

1 rating systems, manual rules, and any other information that
2 impacts the policyholder's pure premium rates.

3 (c) If a licensed rating organization rejects an employer's
4 request for policyholder information, the rating organization shall
5 notify the employer in writing of the reasons for the rejection. An
6 employer whose request has been rejected in whole or in part
7 may appeal to the ~~commissioner~~ *commission* in accordance with
8 Section 11753.1. If the ~~commissioner~~ *commission* finds that the
9 reasons for the rejection are not justified, ~~he or she~~ *it* may order
10 the rating organization to furnish that information to the
11 employer.

12 (d) No licensed rating organization or member of the
13 organization, or member of a committee of a licensed rating
14 organization when acting in its capacity as a member of the
15 committee, or officer or employee of a licensed rating
16 organization, when acting within the scope of his or her
17 employment, is liable to any person for injury, personal or
18 otherwise, or damages caused or alleged to have been caused,
19 either directly or indirectly, by the disclosure of information to an
20 employer under this section or for the accuracy or completeness
21 of the information disclosed.

22 (e) This section does not imply the existence of liability in
23 circumstances not defined in this section, nor does it imply a
24 legislative recognition that, except for enactment of this section,
25 a liability has existed or would exist in the circumstances stated
26 in this section.

27 (f) This section does not limit any authority of a licensed
28 rating organization to disclose information contained in its
29 records to others.

30 ~~(g) There shall be established in all licensed rating~~
31 ~~organizations a policyholder ombudsman. The policyholder~~
32 ~~ombudsman shall be a person with sufficient knowledge of the~~
33 ~~workers' compensation ratemaking process to provide~~
34 ~~information and assistance to policyholders in obtaining and~~
35 ~~evaluating the information provided in Article 2 (commencing~~
36 ~~with Section 11730) and this article, and in Sections 3761 and~~
37 ~~3762 of the Labor Code. Every rating organization licensed in~~
38 ~~this state shall provide compensation for the ombudsman and~~
39 ~~necessary staff and other necessary resources to allow the~~
40 ~~ombudsman to provide prompt and complete service to workers'~~

1 compensation policyholders of this state. The policyholder
2 ombudsman may advise the policyholder in any dispute with
3 insurers or the rating organization that the ombudsman serves, or
4 on appeal to the commissioner as provided in Section 11737.

5 (h) For all policies of insurance issued or renewed on or after
6 January 1, 1994, the insurer shall advise the policyholder in
7 writing of the following:

8 (1) The policyholder's right to request a written report
9 containing the information set forth in this section from the
10 licensed rating organization of which the insurer is a member,
11 and the policyholder's right to contact the policyholder
12 ombudsman to assist in obtaining and evaluating information
13 relating to rates, together with the telephone number and address
14 of the ombudsman, as well as the policyholder's right to contact
15 the ~~department~~ *commission* to resolve a dispute with an insurer,
16 as provided in this section and Section ~~11737~~ 11738.

17 (2) If a participating policy, that upon payment or nonpayment
18 of a dividend the policyholder shall be provided a written
19 explanation, in clear and understandable language, setting forth
20 the basis of the calculation and expressing any dividend in both
21 dollar amount and as a percentage of earned premium under the
22 policy.

23 (3) The date when the insurer is required to file the first unit
24 statistical report with the licensed rating organization designated
25 by the ~~commissioner~~ *commission*.

26 SEC. 8. Section 11752.8 of the Insurance Code is amended to
27 read:

28 11752.8. (a) For all policies of insurance issued, or renewed
29 for the first time on or after January 1, 1995, the insurer shall
30 provide a notice, approved by the ~~commissioner~~ *commission*, to
31 the policyholder, explaining in easily understandable language
32 the workers' compensation rating laws. For policies issued or
33 renewed between January 1, 1994, and January 1, 1995,
34 inclusive, the insurer shall include a notice to the policyholder, in
35 easily understandable language, containing a summary of the
36 changes in the rating laws enacted during the 1993–94 Regular
37 Session of the Legislature.

38 (b) *For all policies of insurance issued, or renewed on or after*
39 *January 1, 2006, the insurer shall provide a notice, approved by*
40 *the commission, to the policyholder, explaining in easily*

1 *understandable language the workers' compensation laws. The*
2 *notice shall include a separate highlighted section explaining the*
3 *right of the employer to appeal classification determinations and*
4 *highlighting other appeal rights available to the policyholder*
5 *pursuant to Section 11753.*

6 (c) The notice required by this section may be combined with
7 the notice required by subdivision ~~(h)~~ (g) of Section 11752.6.

8 SEC. 9. Section 11873 of the Insurance Code is amended to
9 read:

10 11873. (a) Except as provided by subdivision (b), the fund
11 shall not be subject to the provisions of the Government Code
12 made applicable to state agencies generally or collectively, unless
13 the section specifically names the fund as an agency to which the
14 provision applies.

15 (b) The fund shall be subject to the provisions of Chapter 10.3
16 (commencing with Section 3512) of Division 4 of Title 1 of, and
17 Division 5 (commencing with Section 18000) of Title 2 of, the
18 Government Code, with the exception of all of the following:

19 (1) Article 1 (commencing with Section 19820) and Article 2
20 (commencing with Section 19823) of Chapter 2 of Part 2.6 of
21 Division 5 of Title 2 of the Government Code.

22 (2) Sections 19849.2, 19849.3, 19849.4, and 19849.5 of the
23 Government Code.

24 (3) Chapter 4.5 (commencing with Section 19993.1) of Part
25 2.6 of Division 5 of Title 2 of the Government Code.

26 (c) Notwithstanding any provision of the Government Code or
27 any other provision of law, the positions funded by the State
28 Compensation Insurance Fund are exempt from any hiring
29 freezes and staff cutbacks otherwise required by law. This
30 subdivision is declaratory of existing law.

31 (d) *The fund shall not be subject to Article 4.1 (commencing*
32 *with Section 739) of Chapter 1 of Part 2 of Division 1.*

33 SEC. 10. Chapter 8 (commencing with Section 180) is added
34 to Division 1 of the Labor Code, to read:

35
36 CHAPTER 8. COMMISSION ON WORKERS' COMPENSATION
37 RATE REGULATION
38

39 180. (a) There is in the Department of Industrial Relations,
40 the Commission on Workers' Compensation Rate Regulation,

1 hereafter referred to in this chapter as the commission. The
2 commission shall be composed of three members: the Governor,
3 the Attorney General, and the Insurance Commissioner, or their
4 designees.

5 (b) The Governor or his or her designee shall serve as chair of
6 the commission.

7 181. (a) The commission may employ necessary assistants,
8 officers, experts, hearing officers, and any other employees that it
9 deems necessary, including expert actuaries, and at least one
10 employee who is a member of the Casualty Actuarial Society. All
11 personnel of the commission shall be under the supervision of the
12 chair of the commission or an appointed executive officer to
13 whom the chair delegates this responsibility.

14 (b) All personnel shall be appointed pursuant to the State
15 Civil Service Act (Part 2 (commencing with Section 18500) of
16 Division 5 of Title 2 of the Government Code). The salaries of
17 the hearing officers shall be fixed by the State Personnel Board at
18 a rate comparable to that of other referees or hearing officers in
19 state service whose duties and responsibilities are comparable,
20 without regard to whether the other positions have membership
21 in the State Bar of California as a prerequisite to appointment.

22 (c) In addition to an executive director, the chair shall appoint
23 a public advocate.

24 182. The commission shall have all powers necessary to
25 exercise its authority and perform its duties pursuant to Article 2
26 (commencing with Section 11730) and Article 3 (commencing
27 with Section 11750) of Chapter 3 of Part 3 of Division 2 of the
28 Insurance Code.

29 183. (a) Notwithstanding the provisions of Section 62.5, the
30 Workers' Compensation Administration Revolving Fund may be
31 expended by the department, upon appropriation by the
32 Legislature, for the administration of the commission.

33 (b) For the purposes of the commission, the funds directed to
34 the commission shall consist of assessments made pursuant to
35 subdivision (e) of Section 62.5, excluding self-insured programs.

36 SEC. 11. Section 6401.9 is added to the Labor Code, to read:

37 6401.9. (a) On or before January 1, 2006, the Division of
38 Workers' Compensation, in cooperation with the Division of
39 Occupational Safety and Health and the Department of
40 Insurance, shall establish criteria for a certificate of merit based

1 on whether an employer has an effective injury and illness
2 prevention program (IIPP), including an effective joint
3 employer-employee occupational safety and health committee or
4 safety liaison.

5 (b) An eligible employer may apply for a certificate of merit
6 that shall entitle the employer to a 5 percent discount from the
7 insurance carrier or group self-insurance fund beyond any
8 experience modification rate or other discount standard to the
9 workers' compensation insurance industry. An eligible employer
10 may also use the certificate of merit to meet one of the
11 qualifications for a responsible bidder pursuant to Sections 1200
12 and 1201 of the Public Contract Code.

13 (c) The criteria for the certificate of merit shall include, at a
14 minimum, all of the following:

15 (1) No employer shall be eligible for a certificate unless the
16 employer has in place an effective IIPP and an effective joint
17 employer-employee occupational safety and health committee or
18 safety liaison.

19 (2) If an employer is not required to have a committee or
20 liaison, he or she may voluntarily implement a committee or
21 liaison in order to take advantage of the incentives described in
22 subdivision (b).

23 (3) The employer shall not be eligible to apply for a certificate
24 of merit until the committee or liaison has been operating
25 effectively for at least six months.

26 (d) The employer shall submit an application, under penalty of
27 perjury, for an initial certificate or biannual renewal certificate to
28 the Division of Workers' Compensation. The application form
29 shall be accompanied by documentation as determined by the
30 Division of Workers' Compensation in cooperation with the
31 Division of Occupational Safety and Health and the Department
32 of Insurance.

33 (e) The criteria for the certificate of merit shall conform with,
34 among other criteria to be determined by the Division of
35 Workers' Compensation in cooperation with the Division of
36 Occupational Safety and Health and the Department of
37 Insurance, the size of the employer, whether the employer is on a
38 high or low hazard industry list, the lost-workday case incident
39 rate, and the employer's experience modification rate, if any.

1 SEC. 12. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the
6 penalty for a crime or infraction, within the meaning of Section
7 17556 of the Government Code, or changes the definition of a
8 crime within the meaning of Section 6 of Article XIII B of the
9 California Constitution.

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